FR 14

Previous references.

1905.06
(Municipal)

File No. 428 M.
Serial Nos. 1 & 2

Later references

GENERAL AND REVENUE SECRETARIAT

Serial Nos. 1 & 2

Part B for March 1906.

SUBJECT.

Recovery of tax due on houses which are under lock and key in the Mysore City

	FILE No. M. 428 of 1905-06.
	Recovery of tax due on houses which are under lock and key in the Mysore City
1	**From the President, Municipal Commission, Mysore City, No. 92, dated 7th February 1906** **Submits the resolution of the Municipal Board proposing amendment to Section 86 of the Municipal Regulations re the recovery of tax due on houses under lock and key**
2	**To the President, Municipal Commission, Mysore City, and Government Advocate, No 10068-9, dated 29th March 1906** **Observes that in the absence of express statutory authorisation, a distraining officer cannot break open the door of a house which contains the property proposed to be distrained**

R. S 11] 190 5-06

GENERAL AND REVENUE SECRETARIAT

(Municipal)

NOTES.

File No 428-05-

File Heading

Recovery of taxes due on houses which are under lock and key, in the Mysore city Municipality

From

The Presidents of the Mysore City Mun! Commrs

No. 92 Dated 7 2 06 Received 9 2 06

Diary No 6294	Enclos /	Spare Copies.	Serial No /

Brief Abstract of Letter

Intimates that there are a good many houses in Mysore city that are deserted or locked up on which house tax is due for several years past and solicits instructions as to whether such as may be broken open into in order to distrain the property therein, as Sec. 86 of the Mun! Regn does not cover such cases

NOTES AND ORDERS

Section 86 of the Municipal Regulation runs as follows —

"The goods & chattels of any person from whom any rents rate, rents or tax is due may be distrained wherever the same

Notes—First sheet.

MGGPB -30,000—17 2-05

[Rule 12]
General and Revenue Secretariat.

File No 428 of 1905-06

Serial No

may be found, for default in the payment of the money due from such person" But this does not appear to empower the Municipality to ~~may~~ break open the houses which are locked, in view to distrain the property of the defaulter which may be found therein.

2 Rule 68 of the Plague rules published with Govt Notn no 8q710 dt 21/12/1898 empowers a Dy Commr or other officer deputed by him to enter any house which has been vacated or deserted by the inmates & which there is reason to suspect to infected with plague & cause the house to be disinfected &c, but this cannot be applied for the purpose of recovering the house tax, ~~from the people who have left the house~~ ~~Municipality~~ ~~of the Kotwal~~ which cannot be collected after the houses are opened & reoccupied.

3 Submitted for orders of the Hon'ble Senior Member Board of Revenue

12.2.06

13/2/06

13.2.1906

4 The Plague Regulations seem to have nothing to do with this. Under the Municipal

NOTE—Contn sheet

GPB—50,000—23 10-05

R[illegible]]
General and Revenue Secretariat.

File No 428 of 1905/1906

Serial No

Re questions a distraint may be made of moveable property wherever the same may be found. The question is whether the distraining officer can for this purpose break open any outer door of a dwelling house under the Civil Procedure Code he cannot do so in the case of attachment in execution of decree - (see section 271). Is a special direction necessary in the case of Municipal dues? I am afraid not - on this point let me have the opinion of the Dy Secy (Legislative Dept) & the Government Advocate -

EP.
5/2 Dy. Secy 14.2.1906 14/2/06.

6. This is one of those cases in which the existing Municipal law is defective, but which will be set right on the passing of the new Municipal Regulation which has now for a long time been before the Govt. of India. Please see Sub-Secs

Note—Contn sheet

G.P.B—50,000—23 10-05

[R.S 12]
General and Revenue Secretariat.

Rel File No 428 of 1905-06

Serial No

Section 83 of the Calcutta Municipal Act provides that in the absence of a similar express provision in the Municipal Act of 1872, it would be unsafe for Govt. to authorize the Municipal Commrs to break open doors to effect an entry.

Mr Chandrachur 20-2-06

Secy

Agastyanath

223 D/20-2-06

Forwarded to the Govt advocate for opinion 27/2/1906

Secy

A.G. to see V

To Dor IV

IV 27-2-06

Sections 83 & 86 of the Municipal Regulation do not, in my opinion, authorise the Municipality to break open the lock on the outer door of a dwelling for the purpose of effecting a distress. The expression "wherever the same may be found" ~~should~~ must be read in contradistinction to the expression "goods and chattels found on the premises" occurring in section 83. Unless the law specially empowers the distraining officer to break open the outer door of a house he has no power to do so. A landlord who may, at common

Note—Contn sheet

GPB—50,000—23 10-05

G 2.S 12]
General and Revenue
Secretariat

5-

Rl File No 428 of 190 5?-8?

Serial
No

be experienced for want of this
power to remedied by Sec 89 which
provides for a civil suit for
the recovery of arrears not realisa
ble by distraint

S Narayanarao
25 2 06

NOTE—Contn sheet

MGCPB—50 000—17 2 05

G.F.S. 12]

General and Revenue Secretariat.

File No 428 of 1905-06

6

Serial No

9. Submitted for orders with the Govt official opinion of the Govt Advocate
N. J. 2/1/06

10 Secy to Commissioner 27/2/06
&
27.2.1906

1452
25-2-06

11 I agree with the Secy & the Govt Advocate - G.
1/3/06

1.3.1906 1432

11615
2.3.06

12. If immovable property can be attached in law must assume that the possession thereof was forcibly wrested from the owner, when the sealed door was broken open for the purpose and by is a forcible prohibition they Is there such a prohibition? This reason does not appear to be understood and I shall be obliged if more explicit reasons are given for the order

3 3 06
3.3.1906

1495
5-3-1906

We & write the Secy Revenue Board as the law & take me

Turn over—Continued sheet.

Serial No

have a sweeter expression of his views. It appears to me that "wherever found" means "when found at a place to which access can be had without resort to force".

15 To Dy. Secy

[initials]
7.3.1906

[initials]
6/3/06

16. I have not been able to find any authority for holding that officers entrusted with the execution of ~~any~~ processes have any inherent powers beyond those expressly conferred by law. On the contrary, there are English decisions laying down the principle that "nearly all the inherent powers of [executive] officers are conferred by statute," and that "where a power is conferred by statute, it must be pursued strictly, or it will afford no justification in the event of action arising on account of its exercise." — Vide Anthony Powers of Executive Officers, p. 75. ~~The mere [illegible] to [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] be extended [illegible] [illegible] [illegible] [illegible] a power to do the acts of interference with private rights [illegible] [illegible]~~

17. If the act of breaking open a door

[illegible] [illegible]

Serial No

in the executing a legal process
where a lawful act in itself in the
absence of positive prohibition,
it would be difficult to account for
express enactments conferring such
a power. Thus, the clause on the
subject in S. 103 of the draft Penal Code would
be superfluous, and it would have been
quite unnecessary for the Criminal
Procedure Code to lay down in sections
46 & 47 that a public officer may,
under certain circumstances, break
open any outer or inner door or window
in connection with the execution of an
arrest warrant, and similarly, as
regards searches (S. 102).

15. As regards distraint warrants
under the Civil Procedure Code, the Code
(S. 271) expressly authorizes the
extent to which forcible entry may be
made: outer-doors are not to be broken
open, but doors of inner rooms may be
unfastened & opened.

The Bengal Land Revenue Code
(S. 160) is silent as regards forcible entry to
effect distraints for arrears of revenue.
But under the corresponding section of the

Note.—Contd. sheet

Serial No

Bombay Land Revenue Code (V 3 - 1879), Sec 154 gives an order of the Bombay Govt to the effect that "dwelling "houses are not to be broken into for "the purpose of obtaining goods for "the recovery of arrears of land revenue"

I do think these instances are sufficient to show that, where the law intends that the right in question shall be exercised by the officer executing process, it ~~expressly~~ confers the same in express terms

187-Cr

McLean 20306

1617/20-3-06

I do not also offer a opinion that in the absence of express statutory authorization, a Mamlatdar cannot break open the door of a house which contains the property proposed to be distrained

21/3/06

21/3/06

12059/21/3/06

I do not express any opinion also. An order may be passed accordingly

Non-Contraband

MGCPB—500000—24 7 05

23 Draft sent 24/3/06

22/III/06

GRS 12]
General and Revenue Secretariat

Rul File No 428 of 1905-6 60

Serial No	
24	Draft Submitted H&R Dy No 3 1906
25	Passed 27 3 1906
2	26 To the Board of Rev, and Comr, Assam & the Govt Advocate No 10068-9 dy 29-3-06 Directing that in the absence of express statutory authorization a distraining officer cannot break open the door of a house which contains the property proposed to be distrained

NOTE—Continue

MGCPB—50 000—1 20

Ml 428-05 D6294

92 87 1-

THE CITY MUNICIPAL OFFICE,
MYSORE

Dated 7th February 1906

From

H H Sparkes Esquire

PRESIDENT, CITY MUNICIPAL COMMISSION,
MYSORE

To

B K Venkatavarada Iyengar Esquire

SECRETARY TO THE GOVT OF MYSORE,
REV & GEN DEPTS

Sir,

I have the honour to bring to your notice that there are good many houses in this city either deserted or locked up on which house taxes are due for several years Section 86 of the -- Municipal Regulations provides only for distraining the goods and chattles of any person from whom any rent or tax is due whereever - the same may be found for default or payment of money due from such person But it is a doubtful question whether I can break open the lock put on the door of a house to destrain the property therein to be found under the authority conveyed in section 86 of the Regulation I beg therefore that you will be so good as to move the Government to pass a definite ruling on the subject with a view to enable me to wipe off the arrears outstanding against such buildings in the accounts of this office for a long time since

A copy of the resolution of the Board on the subject -

subject is also appended

2

I have the honour to be,

sir,

your most obedient servant,

For President

Proceedings of the Mysore City Municipal Board dated 27-1-1906

Docket No 1654 dated 4th January 1906 from the President Bangalore city Municipality in regard to the recovery of taxes due on houses that have been deserted and are under lock and key, toge with the correspondence connected therewith

Resolved that as Section 96 of the Municipal Regulati does not meet the present case that Government be addressed on the subject

(signed) H H Spar

President.

"copy"

For President

6

S 28]

File No 3 1178 P.S
Serial No 2

Diary No of letter replied to 6294

Proceedings of the Government of His Highness the Maharaja of Mysore

To GENERAL AND REVENUE SECRETARIAT (Revenue)

, the 190

Date of issue 29-3-06

igned by [illegible]

READ — Letter No 92 dated the 7th February 1906 from the President of the Mysore Sub Municipal Commissioners stating that there are a good many houses in the City, either deserted or locked up, on which house tax is due for several years past and soliciting instructions as to whether such houses may be broken open into on order to distrain the property therein, as Sec 86 of the Municipal Regulations does not

SUBJECT

Directs that, in the absence of express statutory authorization, a distraining officer cannot break open the door of a house which contains the property proposed to be distrained

not cover such cases

Order thereon No 10068-9 029-3-06
mll628-05)-2

In the absence of express
statutory authorization
a destraining officer cannot
break open the door of a
house which contains the
property proposed to
be destrained

27 3 1906

Secretary

To 27/3/06 J26/3/06

The President of the Singapore City
Municipal Council

Govt Advocate with a copy
of this letter

H.C.G
28. 3 1906

T.H.C 28/3
Ans 29/3